

(ii) The Board will make a determination on the requests, and the Executive Secretary will notify the grantee in writing of the Board's determination, and will publish notice of the determination in the FEDERAL REGISTER.

(c) *Scope determinations.* Determinations shall be made by the Executive Secretary as to whether changes in activity are within the scope of related activity already approved for the facility involved under this part. When warranted, the procedures of paragraph (b)(2) of this section will be followed.

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§ 400.33 Restrictions on manufacturing and processing activity.

(a) *In general.* In approving manufacturing or processing activity for a zone or subzone the Board may adopt restrictions to protect the public interest, health, or safety. The Commerce Department's Assistant Secretary for Import Administration may similarly adopt restrictions in exercising authority under § 400.32(b)(1).

(b) *Restrictions on items subject to anti-dumping and countervailing duty actions—(1) Board policy.* Zone procedures shall not be used to circumvent anti-dumping (AD) and countervailing duty (CVD) actions under 19 CFR parts 353 and 355.

(2) *Admission of items subject to AD/CVD actions.* Items subject to AD/CVD orders or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures, if they entered U.S. Customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR parts 353 and 355.

Subpart E—Zone Operations and Administrative Requirements

§ 400.41 Zone operations; general.

Zones shall be operated by or under the contractual oversight of zone grantees, subject to the requirements of the Act and this part, as well as those of other federal, state and local

agencies having jurisdiction over the site and operation. Zone grantees shall ensure that the reasonable zone needs of the business community are served by their zone projects. The Port Director represents the Board with regard to the zone projects in the district and is responsible for enforcement, including physical security and access requirements, as provided in 19 CFR part 146.

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§ 400.42 Requirements for commencement of operations in a zone project.

(a) *In general.* The following actions are required before operations in a zone may commence:

(1) Approval by the Port Director of an application for activation is required as provided in 19 CFR part 146; and

(2) The Executive Secretary will review proposed manufacturing or processing, pursuant to § 400.32, and a zone schedule as provided in this section.

(b) *Zone schedule.* (1) The zone grantee shall submit to the Executive Secretary and to the Port Director a zone schedule which sets forth:

(i) Internal rules and regulations for the zone; and

(ii) A statement of the rates and charges (fees) applicable to zone users.

(2) A zone schedule shall consist of typed, loose-leaf, numbered, letter-sized pages, enclosed in covers, and shall contain:

(i) A title page, with information to include:

(A) The name of the zone grantee and operator(s);

(B) Schedule identification;

(C) Site description;

(D) Date of original schedule; and

(E) Name of the preparer;

(ii) A table of contents;

(iii) Administrative information;

(iv) A statement of zone operating policy, rules and regulations, including uniform procedures regarding the construction of buildings and facilities; and

(v) A section listing rates and charges for zones and subzones with information sufficient for the Board or the Executive Secretary to determine

whether the rates and charges are reasonable based on other like operations in the port of entry area, and whether there is uniform treatment under like circumstances among zone users.

(3) The Executive Secretary will review the schedule to determine whether it contains sufficient information for users concerning the operation of the facility and a statement of rates and charges as provided in paragraph (b)(2) of this section. If the Executive Secretary determines that the schedule satisfies these requirements, the Executive Secretary will notify the zone grantee, unless there is a basis for review under paragraph (b)(5) of this section. A copy of the schedule shall be available for public inspection at the offices of the zone grantee and operator. The zone grantee shall send a copy to the Port Director, who may submit comments to the Executive Secretary.

(4) Amendments to the schedule shall be prepared and submitted in the manner described in paragraphs (b)(1) through (b)(3) of this section, and listed in the concluding section of the schedule, with dates.

(5) A zone user or prospective user showing good cause may object to the zone or subzone fee on the basis that it is not reasonable, fair and uniform, by submitting to the Executive Secretary a complaint in writing with supporting information. The Executive Secretary will review the complaint and issue a report and decision, which will be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The factors considered in reviewing reasonableness and fairness, will include:

- (i) The going-rates and charges for like operations in the area and the extra costs of operating a zone, including return on investment; and
- (ii) In the case of subzones, the value of actual services rendered by the zone grantee or operator, and reasonable out-of-pocket expenses.

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§ 400.43 Restriction and prohibition of certain zone operations.

(a) *In general.* After review, the Board may restrict or prohibit any admission of merchandise into a zone project or operation in a zone project when it determines that such activity is detrimental to the public interest, health or safety.

(b) *Initiation of review.* The Board may conduct a proceeding, or the Executive Secretary a review, to consider a restriction or prohibition under paragraph (a) of this section either self-initiated, or in response to a complaint made to the Board by a party directly affected by the activity in question and showing good cause.

§ 400.44 Zone-restricted merchandise.

(a) *In general.* Merchandise which has been given export status by Customs officials (“zone-restricted merchandise”—19 CFR 146.44) may be returned to the Customs Territory of the United States only when the Board determines that the return would be in the public interest. Such returns are subject to the Customs laws and the payment of applicable duties and excise taxes (19 U.S.C. 81c, 4th proviso).

(b) *Criteria.* In making the determination described in paragraph (a) of this section, the Board will consider:

- (1) The intent of the parties;
- (2) Why the goods cannot be exported;
- (3) The public benefit involved in allowing their return; and
- (4) The recommendation of the Port Director.

(c) *Procedure.* (1) A request for authority to return “zone-restricted” merchandise into Customs territory shall be made to the Executive Secretary in letter form by the zone grantee or operator of the zone in which the merchandise is located, with supporting information and documentation.

(2) The Executive Secretary will investigate the request and prepare a report for the Board.

(3) The Executive Secretary may act for the Board under this section in cases involving merchandise valued at 500,000 dollars or less, provided requests